IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4637 OF 1986

ALONG WITH

CIVIL APPLICATION NO.1083 OF 2003

1. Ganesh Vasudeo Parab,
   since deceased by his legal heirs
   and representatives:

   a) Dattaram Baburao Parab
   b) Sadashiv Baburao Parab
      both residing at Digvijay
      Chawl No.75/B, 2nd floor,
      Room No.33, Ambedkar Road,
      Parel, Bombay - 400 012.

2. Sadashiv Babu Parab,
   since deceased by his legal heirs
   and representatives :

   a) Dattaram Baburao Parab
   b) Chandrashekhar Sadashiv Parab
      both residing at Digvijay Chawl
      No.75/B, 2nd floor, Room No.33,
      Ambedkar Road, Parel,
      Bombay - 400 012. ...Petitioners

Versus

Vyankatrao Subhanrao Patankar,
since deceased, by his heirs :

1.Dilip Vyankatrao Patankar
3.Pradip Vyankatrao Patankar
5.Smt.Vinadevi Vyankatrao Patankar
6.Subhanrao Vyankatrao Patankar
  All residing at & Post Sawantwadi,
  Taluka Sawantwadi, Dist.Sindhudurg.
7.Smt.Laxmi Laxman Parab
8.Laxman Fathu Parab
  Both Adults, R/o Vajarat, Taluka
  Vengurla, District - Sindhudurg ...Respondents

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Mr.G.R.Rege with Mr.N.B.Shah & Mr.S.M.Railkar for Petitioners.

Mr.S.G.Karandikar for Respondents 7 and 8.

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CORAM: A.M.KHANWILKAR, J.

JULY 6, 2004.

ORAL JUDGMENT :

1. This Writ Petition takes exception to the Judgment and Order passed by the Maharashtra Revenue Tribunal, Mumbai dated March 19, 1986 in Tenancy Appeal No.159 of 1985. The land in question is an agricultural land bearing Survey No.6 Hissa No.31, Survey No.7 Hissa No.1+2-A and Survey No.10 Hissa No.1, totally admeasuring about 13 acres 24.9 gunthas. The original Respondents claim to be owners of the suit lands. The suit lands originally formed part of the joint family property.

2. In this proceedings, we are concerned with the application preferred by the Petitioners for

declaration that the Petitioners are tenants in respect of the above said lands. That application was filed on June 13, 1973 under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act'). The landlords on the other hand, filed Suit before the Civil Court, which included land bearing Survey No.10 Hissa No.1. As the Petitioners raised issue of tenancy even in respect of the said land, the Civil Court made reference to the Tenancy Authority under Section 85A of the Act. The said reference and the application preferred by the Petitioners under Section 70(b) of the Act were heard together. In other words, the issue as to whether the Petitioners were tenants in respect of all the three lands came up for consideration before the Tenancy Authority. The Tahsildar being the Tenancy Authority, declared by Judgment and Order dated 6th March 1979 that the Petitioners were tenants only in respect of land bearing Survey No.6 Hissa No.31 and not in respect of the other two lands. Against this decision, the landlords preferred appeal before the Appellate Authority. Cross appeal was preferred by the tenants to claim further relief in

respect of the other two lands. The Appellate Court, after examining the matter was, however, pleased to remand the matter to the First Authority by Judgment and Order dated January 30, 1980. After remand, parties filed joint Pursis before the Tenancy Authority that they were not interested in adducing further evidence. In other words, on the basis of evidence already on record, the Tenancy Authority proceeded to decide the matter and by Judgment and Order dated September 5, 1983, once again declared the Petitioners as tenants only in respect of land bearing Survey No.6 Hissa No.31. Against this decision, original Petitioner No.2 and Petitioner No.1B preferred appeal before the Appellate Authority seeking relief in respect of the other two lands also. This appeal was allowed by Judgment and Order dated May 31, 1985. The Appellate Authority mainly relied on the documents such as receipts, notice dated 17th December 1956 sent by landlord Shri Patankar terminating the tenancy, Protected Tenancy Register and Akad Phod Patrak to hold that the tenants were in possession of all the three suit lands prior to 1st April 1957. Against this decision, original Respondents

preferred Revision before the Maharashtra Revenue Tribunal which has been allowed by the impugned Judgment and Order dated March 19, 1986. The Tribunal, in the first place, observed that the lower Authority did not comply with the direction given in the earlier order of the Appellate Authority dated 30th January 1980. It then went on to observe that the decision of the Appellate Authority suffers from non-application of mind, as the Appellate Authority has not given proper and legal reasons and has not critically appreciated the evidence on record. It further observed that the Appellate Authority has not considered the intrinsic value of the evidence and has reached the finding on the basis of surmises and inferences. The Tribunal further observed that the Authorities below ought to have required the parties to adduce further evidence to find out the exact area and names and locations of the lands, which were in possession of the Petitioners as tenants immediate before the Pot Hissa measurement was carried out in the Village. On this reasoning, the Tribunal thought it appropriate to set aside the decision of the Appellate Authority and remanded the matter to

the Appellate Authority for fresh decision, in accordance with law. This remand order is subject matter of challenge in the present Petition.

3. This Petition came up for hearing on the earlier occasion in June 2000 before this Court, when by decision dated June 22, 2000, the same was allowed by setting aside the order of the Tribunal. However, after the said order was passed, the newly added Respondent Nos. 8 and 9 (now Nos.7 and 8) preferred Application placing on record that they were the real owners having purchased the lands in question from original Respondent No.2 Ajit Vyankatrao Patankar. They also placed on record that the lands were partitioned by Partition Deed dated 28th March 1957 which was, however, registered on 18th May 1957 though lodged on 28th March 1957. According to them, by virtue of the said Partition Deed, all the three suit lands have been given exclusively to Respondent No.2 and the Respondent No.2 became absolute owner of the suit lands, who in turn, sold the said lands to them (present Respondents 7 and 8) by registered Deed dated 4th February 1984. In other words, it was

contended that they have become the owners of the suit land and the decision passed in Writ Petition was untenable, as it was passed in the absence of real owner and moreso, because even the Respondent No.2 had died when the Writ Petition was heard and his heirs were not brought on record and further that the other Respondents cannot be said to have inherited the property as such, nor can be said to have represented the estate of the deceased Respondent No.2. After considering the rival submissions this Court allowed the application preferred by present Respondents 7 and 8 by order dated December 10, 2002 recalling the earlier order by a reasoned order and restored the Writ Petition to the file to its original number and directed impleadment of the present Respondents 7 and 8. Now before this Court, the Respondents 7 and 8 have filed Application being Civil Application No.1083 of 2003, praying that they may be permitted to adduce additional evidence, which is appended to the said application, inter alia, consisting of registered Partition Deed dated 21st March 1957, registered Sale Deed dated 4th February 1984, copies of mutation entries, copies of 7/12 extract

of the suit lands for the relevant years and other documentary evidence, which was not produced before the Court below. This order will dispose of even the said application.

4. According to Mr.Rege and Mr.Shah for the Petitioners, the Tribunal has committed manifest error in interfering with the well reasoned decision of the Appellate Authority, which was in favour of the Petitioners. It is contended that the first reason recorded by the Tribunal clearly overlooks the fact that the parties filed joint pursis before the Authority after remand that they were not interested in adducing any further evidence. It is submitted that after such pursis, the question of requiring the parties to adduce further evidence did not arise and for which reason, the main foundation on which the Tribunal proceeded to reverse the decision of the Appellate Authority, will have to be discarded. It is then contended that the Appellate Authority had adverted to each document and has analysed the same, whereas, the Tribunal by a cryptic observation has mentioned that the Appellate Authority has not

critically appreciated the evidence on record or the intrinsic value of the evidence, but reached at the conclusion on the basis of the surmises and conjectures. That view expressed by the Tribunal is untenable from the record. It was then contended that the present Respondents 7 and 8 have no locus to contest the present proceedings between the Petitioners and the original landlords. It is then argued that newly added Respondents have placed on record purported Partition Deed in respect of the suit lands only to complicate the matter and are likely to contend that by virtue of the Partition, original Respondent No.2 became absolute owner on 28th March 1957 in respect of all the three lands and on which date, he was admittedly minor being 3 years of age, and if it is so, the tillers' day would stand postponed by operation of Section 32F of the Act. It is submitted that if such a plea was to be advanced, the same will have to be rejected on the reasoning that the purported Partition has been entered only with a view to defeat the provisions of the Act and the right which has been enured in favour of the tenants by operation of law on having become deemed

purchasers on 1st April 1957. On the above arguments, learned Counsel contended that the order in question cannot be sustained either on facts or in law.

5. On the other hand, Counsel for the newly added Respondents Mr.Karandikar contends at the outset that the purpose of producing Partition Deed before this Court is not to canvass the argument that the Petitioners did not become deemed purchasers on Tillers' Day, as the Tillers' Day would stand postponed on account of disability of Respondent No.2 who has become absolute owner in respect of the suit lands under the said Partition Deed. He submits, on instructions, that the newly added Respondents will not invoke such a contention either before this Court or even otherwise, but they are inviting finding on merits on the issue as to whether the Petitioners can be said to be tenants in respect of the suit lands and at any rate, in lawful possession thereof on 1st April 1957. Mr.Karandikar submits that if the Petitioners are held to be in lawful cultivation of the suit lands on 1st April 1957, the newly added

Respondents would straightaway concede the right of the Petitioners of having become deemed purchasers on that day, notwithstanding, the registered Sale Deed executed in their favour by the original Respondent No.2 in respect of the suit land. He then contends that no fault can be found with the view taken by the Tribunal that the matter deserves to be remanded to the Appellate Court. According to him, the Tribunal has rightly found that the Appellate Authority has not at all adverted to several documentary evidence produced on behalf of the landlords. It is seen from the record that the landlords have relied upon 46 documents besides other evidence. However, the Appellate Authority has not adverted to any of those documents, but proceeded to decide the matter in favour of the Petitioners only with reference to the four documents pressed into service on behalf of the Petitioners already referred to earlier, as can be discerned from the discussion in Para 5 of the impugned Judgment. According to him, this is the manifest error committed by the Appellate Authority and the Tribunal was justified in invoking its revisional jurisdictional under Section 76 to

correct the said mistake and to do justice to the parties. According to him, no fault can be found with the view expressed by the Tribunal that the matter deserve to be re-examined by the Appellate Authority. He has also criticised the reasons recorded by the Appellate Authority which are essentially founded on the receipts produced by the Petitioners as also notice dated 17th December 1956 and the Protected Tenancy Register and Akad Phod Patrak. According to him, neither the receipts nor the Protected Tenancy Register or the Akad Phod Patrak would clearly indicate that the Petitioners were in possession of the suit lands as lawful tenants on 1st April 1957. According to him, the said documents described the land as Ghonikal Sawant, which is too general and not with reference to the suit lands, whereas, the Petitioners were in possession of lands described as Ghonikal Sawant which were different than the suit lands and the tenancy proceedings in respect of the said lands have already attained finality and at no stage, did the tenants contend that in addition to the said lands, the Petitioners were also in lawful occupation as tenants in respect of the suit lands.

In other words, it is contended that the present proceedings under Section 70(b) of the Act taken out by the Petitioners and the stand taken that they are tenants in respect of all the three suit lands is an afterthought.

6. Learned Counsel further contends that in so far as the notice dated 17th December 1956 issued by the original landlord Shri Patankar terminating the tenancy, even that notice will be of no avail because that notice once again is a general notice issued in a printed form and on fair reading of the notice, it will be more than clear that it has been issued out of abundant precaution by the landlords. The notice clearly indicates that the same has been issued to the respective tenants only in respect of the lands held by them as tenants. Even this aspect was pressed into service on behalf of the landlords before the Authorities below and which has found favour with the First Authority. Learned Counsel has placed reliance on the decision of the Apex Court reported in **AIR 1978 SC 347 in the case of Gopala Ganu Wagale vs. Shri Nageshwardeo Patas Abhishekh**

Anusthan Trust, Patas, in particular, observations in Paragraphs 2 and 6 of the said decision, to contend that mere issuance of notice is not sufficient to assume that the person was occupying the lands as tenant as such, but positive evidence of tenancy will have to be brought on record.

7. Mr.Karandikar has also relied upon the order passed in the previous tenancy proceedings between the Petitioners and the Respondents in respect of five other lands other than the suit lands, wherein, it is stated on oath on behalf of the Petitioners tenants that they did not hold any land in any other Village as tenant or owner in actual vahivat, except to the extent of 1 acre and 12 gunthas of land. It is contended that the Petitioners tenants having made that statement on oath, it is not open to them to now assert that they were tenants also in respect of the three suit lands which are subject matter of the present proceedings. Learned Counsel further contends that the Petitioners having purchased the suit lands from the original owners and if the Respondents were right in their stand that the Petitioners were

not tenants in the suit lands, in such a case, the question of obtaining prior permission for sale of suit lands in favour of the newly added Respondents will not arise as the Respondents have become absolute owners. In that capacity, they are entitled to contest the present proceedings besides being representing the estate of original Respondent No.2. On the above arguments, learned Counsel contends that no fault can be found with the decision of the Tribunal of remanding the matter to the Appellate Authority for reconsideration of the case on merits, in accordance with law.

8. Having considered the rival submissions, I have no hesitation in taking the view that no interference is warranted with the remand order as passed by the Tribunal. Indeed, the Tribunal has observed that the Authority ought to have required the parties to adduce further evidence. That observation however was unwarranted, especially when the parties filed joint pursis that they were not interested in adducing further evidence. The opinion of the Tribunal to that extent cannot be

accepted. However, I find substance in the argument canvassed on behalf of the newly added Respondents that the fact recorded by the Tribunal that the Appellate Authority has not at all considered the materials produced on behalf of the landlords in all about 46 documents, that observation is unexceptionable. Even on the fair reading of the decision of the Appellate Authority, it will be seen that the Appellate Authority has allowed the appeal preferred by the Petitioners merely on the basis of the four documents already referred to earlier namely, receipts, notice dated 17th December 1956, Protected Tenancy Register and Akad Phod Patrak. In so far as the receipts, Protected Tenancy Register and Akad Phod Patrak, are concerned, there is substance in the argument canvassed on behalf of the Respondents that the said documents do not specifically refer to the suit lands, but generally describe the land as Ghonikal Sawant. It is seen from the record that previous tenancy proceedings under Section 32G of the Act were initiated between the parties, which culminated in the order in favour of the Petitioners in relation to the lands, which were

described as Ghonikal Sawant lands. In the said proceedings, statement was made on behalf of the tenants that except those lands, the tenants did not possess any other land, either as tenant or as owner, besides land admeasuirng 1 acre 12 gunthas with which, we are not concerned. In other words, it was inappropriate for the Appellate Authority to proceed to decide the point in issue on the basis of these documents, as the said documents did not make specific reference to the suit lands. In so far as the Notice dated 17th December 1956 issued by the landlords is concerned, I find substance in the argument of Respondents that the said notice has been issued out of abundant precaution. Besides, it is seen that the notice is in the printed form and several survey numbers have been mentioned, clearly indicating that the notice is issued to the tenant in respect of the land which has been held by him as tenant as such. Moreover, the Respondents have rightly relied on the exposition of the Apex Court in the case of **Gopala Ganu Wagale (Supra)** that issuance of such notice, by itself, cannot be the basis to hold that the factum of tenancy is established. Viewed in this

perspective, the foundation on the basis of which, the Appellate Authority proceeded to decide the matter in favour of the Petitioners, would fall to the ground. If it is so, no fault can be found with the view taken by the Tribunal that in the fitness of things, it would be appropriate to remand the matter to the Appellate Authority for re-examining the matter, in accordance with law. Although the Tribunal has made sweeping observations that the view taken by the Appellate Authority is without application of mind, however, on careful examination of the evidence on record, as has been pressed into service on behalf of the Respondents, there seems to be substance in the argument that all the documents on record have not been considered by the Appellate Authority. That by itself, would be sufficient ground to sustain the remand order passed by the Tribunal, which is subject matter of appeal before this Court.

9. In the circumstances, this Petition should fail and the order of the Tribunal is sustained. However, it is made clear that none of the observations made in this decision, or for that

matter, by the Tribunal in the impugned order, shall influence the Appellate Authority while examining the matter afresh in terms of the remand order. The Appellate Authority shall consider the matter on the basis of the evidence already on record and to be adduced at the instance of the newly added Respondents herein, subject to giving opportunity to the Petitioners to adduce further evidence in rebuttal, if so advised. The Appellate Authority shall dispose of the Appeal as expeditiously as possible, preferably within six months from the receipt of writ of this Court.

10. Petition dismissed. No order as to costs.

11. In view of the above observations, Civil Application is also disposed of. All questions are kept open.

12. Issuance of certified copy is expedited.

A.M.KHANWILKAR, J.